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REPORT OF THE BRITISH COMMISSION ON DIVORCE.

In the London Law Journal of November 16th, 1912, there is published a summary of the Majority Report of the British Commission on Divorce, which commission was appointed by the House of Lords about three years ago.

The *personnel* of this commission seems, from the very names and the titles of its members, to be somewhat remarkable and makes it presumptively representative of the general population of the Kingdom and of the Church. Thus the nine who agree upon the report are Lord Gorell, Lady Frances Balfour, Mr. Thos. Burt, Lord Guthrie, Sir Frederick Treves, Judge Tindal Atkinson, Mrs. H. J. Tennant, Mr. Edgar Brierley and Mr. J. A. Spender. There is a Minority Report by the Archbishop of York, Sir William Anson and Sir Lewis Dibden. One of the thirteen commissioners, Sir George White, lately died, and it is stated that he agreed in substance with the nine who signed the Majority Report.

The labors of this commission are shown by the statement that it held seventy-one sittings and examined 246 witnesses, these consisting of "Judges of the High Court, County Court judges and registrars, metropolitan police magistrates and stipendiary magistrates, police court missionaries and rescue workers, representatives of law societies, individual barristers and solicitors, representatives of the Church of England and other religious demoninations, lunacy experts, medical practitioners and many others."

Here we have a very comprehensive idea of the care given to a subject that has been agitating Great Britain for nearly, if not quite a century, the first fruit of which agitation was the "Matrimonial Causes Act of 1857," transferring jurisdiction from Parliament to a court of justice. At this time the practice of Parliament was to distinguish between husband and wife as to the right of absolute divorce, it being allowed to the husband for adultery of the wife, and to the wife for adultery of the husband, coupled with his cruelty or his desertion for two years without any reasonable excuse.

This inequality caused dissatisfaction and also it was urged that the grounds of divorce should be extended. Further it was urged that facilitation in the procuring of divorces by persons in more or less indigent circumstances should be provided for.

Thus was the situation when the commission was appointed. This appointment attracted much attention at the time, and the summary of the London Law Journal "of the more important points" indicates how greatly valuable must be the full majority and minority reports.

The recommendations by the majority embrace many things of moment under the English judicial system. All these look to the intent to make suits for divorce readily triable by Commissioners of the High Court appointed for that purpose. Where parties are in more or less indigent circumstances, jurisdiction should be exercised locally, with special tables of fees and costs to be prescribed. Also provision is recommended for proceedings *in forma pauperis*.

It is also recommended that the sexes stand on an equality as to all grounds of divorce, which grounds shall be Adultery, Desertion for three years and upwards, Cruelty, Incurable Insanity after five years' confinement, Habitual Drunkenness found incurable after three years from first order of separation and Imprisonment under commuted death sentence. As to the grounds other than Adultery there is a saving clause "with regard to the position of the clergy of the Church of England," which, as we take it, means that such clergy may refuse to unite in marriage a divorced person, notwithstanding their being ministers of an Established Church.

There are provisions as to separation orders and suits for nullity as to which we are not particularly concerned, nor as to procedure and practice. But there are one or two other things we might mention, which might be embraced in statute here. These refer to presumption of death and reports of trials. The former of these is very specific in regard to the evidence that must create this presumption. The latter gives to the judge power 'to close the court for the whole or part of a case, if the interests of decency, morality, humanity or justice so require." It also gives to the judge power to forbid publication of any "evidence, correspondence, documents or speeches unsuitable for publication," or of any pictorial representations of the parties or witnesses "or others concerned in divorce and matrimonial causes." What a blessing this would be to fall upon America.

It appears from this summary that "cruelty," as a ground for divorce should be defined as consisting of specified acts, but what are the acts to be specified the summary does not show. We judge, however, that the commission intends, that this ground shall be made as certain as are the others.

Viewing the extension of the grounds of divorce, we are struck by the conspicuousness of the absence of such grounds as incompatibility and indignities found in American statute, which comprehend much or little, as by the bent of the judge, they may be thought to embrace. And we think, too, of how greatly the nervousness or imagination of an applicant for divorce may, by moods before suit, or by skillful coaching or internal suggestion at the trial, build up sufficient reason for a decree of dissolution. Plain perjury does not need to be resorted to in such a case.

But of the grounds that are added it is evident, that they are not usable for lightning-like purpose born of impulse or the sudden straying of affection to put away the bonds that have been entered into as soon as they have become irksome.

Indeed, it might be thought that so hard are all the grounds other than adultery, as usable material in an action for divorce, that they suggest a *dernier resort* in the old single ground, where there is intense desire for release. Of course, however, this cannot be accomplished unless defendant joins in the wish of the plaintiff.

It is to be regretted, as seems from the summary, that nothing has been recommended in regard to collusion, division of property, or even alimony, nor custody of children. Legislation without these things may be thought somewhat inadequate.

But the British report contains much that should be utilized by the advocates of uniform divorce laws and the manner of getting at the basic facts for its recommendations is very commendable. Legislation here is not only to be deplored because of its great diversity, but it has lacked much in precision in defining grounds for divorce, a thing these British recommendations seem solicitous to avoid.

NOTES OF IMPORTANT DECISIONS

EXECUTORS AND ADMINISTRATORS' PLEA OF STATUTE OF LIMITATIONS BY EXECUTOR AS TO PERSONAL DEBT TO ESTATE.—Maryland Court of Appeals held, that an executor was not entitled to plead that his personal debt to the estate of his testator was barred by limitations at the death of the latter. Long v. Long, 84 Atl. 375. It cites for authority for this ruling Thompson v. Thompson, 77 Ga. 692, 701, 3 S. E. 261, 264, and Ingles v. Bird, 28 Beav. 366, among other cases. It does appear that in the former case there was a similar plea and, by Judge Bleckley, speaking for the court, it was said that: "An examination of the authorities makes it clear to us that an administrator, who is a debtor to the intestate individually or as surviving co-partner, is chargeable as administrator with the amount of such debt; and that the statute of limitations will not protect him against accounting for it so long as he remains accountable for assets generally." Among other cases he cites is the Ingles case supra. The instant case says that in that case: "Sir John Romilly, master of the Rolls, held that a lapse

of 14 years was not sufficient for such a plea to be set up."

We think this case was misapprehended, and that rightly viewed it is direct authority the other way. It was ruled there that, where a testator died in 1842 and the executor did not prove the will until 1856, he could not then set up the statute of limitations, barring the debt intermediately, and the act of proving had relation back to the testator's death. This debt was not barred at testator's death and the reasoning in the opinion is that had it been the plea of the statute would have been allowed.

In Wilson v. Rose, Fed. Cas. 17831, 3 Cranch 371, Cranch, Chief Judge, reasoned along the same line as did Sir John Romilly, saying: "The debt was not barred at the time of the death of the testator. It was a valid subsisting debt which the executor was bound to return in the list of debts."

The instant case also cites Haines v. Haines, 15 Atl. (N. J.) 839, but that case shows that an executor, who was liable to the testator for rent of land at the time of the latter's death, was not allowed to plead to a bill for the settlement of his accounts as executor, that this liability accrued six years before the filing of the bill, because it was his duty to collect all debts due to the estate as well from himself as others, and the statute as to his own debt did not run pending his trusteeship. The opinion says: "Isaiah is one of the executors and he accepted the trust and from that moment he became chargeable with all the moneys in his hands, due to the estate, whether as a debt due from him or any other source, as well as moneys received afterwards. What would be the reply of the court to a trustee, who being indebted to the testator on a promissory note, but which should have run the statutory period before the statutory period before settlement of his accounts, and he should at last plead in discharge thereof the act respecting limitations? He doubtless would be ordered to pay."

It is difficult to discern the reason why acceptance of such a trust should revive a debt barred before that, but it is readily understood why the statute should be tolled by such acceptance, if it had not fully run. The testator is supposed to exercise a preference, which is to be as freely accepted as tendered, and in intestacy the law gives a preference not intended to entail the forfeiture of any personal right. Any other rule bars or tends to bar a testator's right of choice, or a supposed benefit conferred by law.

THE NEW CONSTITUTION OF OHIO —POWER OF COURTS TO REVIEW ACTS OF THE LEGISLATURES.

The amendments to the Constitution of Ohio adopted by the people of that State, September 3, 1912, are of great importance and deserve careful consideration. They embody propositions which are discussed in other states and which tend to change radically the character of the American system of government. The fundamental and distinctive principle of that system, embodied not only in the United States Constitution, but in that of all the states prior to the present century, is this: The Legislature is not omnipotent. The people are not willing to entrust their representatives with unlimited power. Therefore the people adopt written constitutions which regulate and restrain the exercise of legislative power, and they establish courts with power adequate to enforce these constitutional restrictions.

No such system existed anywhere in the world before the year 1789. The people of the United States prior to that time had bitter experience in dealing with a Parliament that claimed to be omnipotent and with legislatures of the separate colonies that were not in fact restrained by any written constitution. The result of this condition was no doubt much worse in the United States than in Great Britain, for the thirteen colonies discriminated against each other in various ways and refused to obey the requirements of the central Confederate government. The result was bankruptcy and absolute loss of credit.

These same founders of the American Government believed that a state could not prosper unless the individual members were prosperous, and that no individual member could prosper unless he was secure in the right to earn an honest living and to enjoy the fruits of his labors. They therefore ordained and established the Constitution of the United States of America. "In order to form a more perfect union, establish justice, insure domestic tranquil-

ity, provide for the common defense, promote the general welfare and secure the blessing of liberty to ourselves and our posterity."

These ideals they have achieved. No country in the world has prospered, since 1789, to the same extent as the United States. This prosperity has become known in foreign countries. The degree to which this has become the "Promised Land" to people in other countries, is perhaps nowhere so faithfully described as in the remarkable book by Mary Antin with that title, which every American who is somewhat weary of the constant abuse that is heaped upon our country and her institutions should read. In fact it would be even better if the muckrakers would read it, too.

The Third Article of this Constitution provides:

"Section 1. The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain or establish.

"Section 2. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States and treaties made, or which shall be made, under their authority."

Thus the Supreme Court is made by the Constitution a co-ordinate branch of the United States Government.

In Article Six, Paragraph Two, we have the final declaration:

"This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

Under these provisions the Federal Circuit Courts, in 1791 and again in 1795, held that it was not only the right but the duty of the Court to decide that an act of the legislature in violation of the Constitution was void.[1] How otherwise could the provision be enforced that the Constitution was the supreme law? If a law is supreme, it must control. The only way to make its control effective is to enforce it. This enforcement is enforcing the authority that the people, in adopting the Constitution, gave to the Court. In short the final authority is in the people, not in members of the legislature or in the judges. These decisions were in 1803 followed by the Supreme Court in Marbury v. Madison.[2] In that famous case Chief Justice Marshall, delivering the opinion of the Court stated (pp. 176-7) with his customary clearness the reasons which led the people to confer this great power upon the courts:

"That the people have an original right to establish, for their future government, such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected.

"This original and supreme will organizes the government and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

"The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by any ordinary act.

"Between these alternatives there is no middle ground. The constitution is either

(1) Hayburn's Case, 2 Dallas, 410, 411, 412; Van Horne v. Dorrance, 2 Dallas 304.

(2) 1 Cranch 137.

a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it."

The famous debate in 1833 upon the right of secession, between Webster and Calhoun, turned upon this very point. Calhoun argued that the Constitution was a compact between sovereign states, that there was no common arbiter to decide disputes and that each state must therefore decide for itself. Webster argued:

"That the Constitution of the United States * * * is a government proper, founded on the adoption of the people,* * * That there is a supreme law, consisting of the Constitution of the United States, acts of Congress passed in pursuance of it and treaties * * * and in cases capable of assuming, and actually assuming the character of a suit, the Supreme Court of the United States is the final interpreter."

It cost this nation thousands of lives and billions of money to establish and enforce this proposition of Daniel Webster. Those who assail it now are, in my judgment, as really secessionists, as Beauregard was when he fired on Fort Sumter. They are just as honest and just as deluded.

In pursuance of the authority thus conferred upon the Courts by the Constitution, the Supreme Court rendered a series of decisions which really made us a nation. These decision declared that certain acts of local legislatures were void, and that the supreme law of the United States must control.

In McCullough v. Maryland, 4 Wheaton 316, the Court held that the Federal Government could not be controlled in the exercise of its functions by the taxing power of the state.

In Gibbons v. Ogden, 9 Wheaton 1, it held that commerce between the states could not be controlled by an act of the state legislature.

In the Bank of Augusta v. Earle, 13 Peter 519, it held that a corporation incorporated under the laws of one state had a right to do business in another.

In the Passenger Tax Cases, 7 Howard 283-412, the Supreme Court held that state statutes undertaking to regulate and control immigration into the United States were in violation of the Federal Constitution and that whole subject was a part of foreign commerce, which was under the exclusive jurisdiction of the Congress.

In every one of these cases the State Court had decided in favor of the validity of the obnoxious state statute. In the last of them the judgment was rendered by a divided court. If this Ohio idea had then prevailed the subject of immigration would have been left to the conflicting regulations of the several states.

It is not too much to say that if these four leading cases had been decided otherwise the United States would not have been a nation. Its government would not have been worth preserving and would certainly have gone to pieces at the first serious assault. A nation whose agencies can be taxed out of existence by a part of the nation, whose citizens have no right to trade or do business outside the limits of their own local jurisdiction, and whose foreign commerce is subject to the control of each particular part, is no nation at all. The bond of such a country would be a rope of sand.

With these principles and precedents in mind, let us consider the new constitution of the State of Ohio.

Article Four of that instrument contains the following clause: "No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the Court of Appeals declaring a law unconstitutional and void." The full court consists of seven judges. Under this provision it would only be necessary to secure the absence of two of these judges to prevent the court from giving judgment in favor of the rights of the citizens of Ohio as against an act of

the legislature prohibited by the organic law.

The Bill of Rights, which remains in the Constitution of Ohio, declares that "all men have certain inalienable rights among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and seeking and obtaining happiness and safety." Then follow many prohibitions directed against the action of the Legislature and intended to secure to the people of Ohio these inalienable rights.

There are only two ways in which such rights can be secured. One is peaceable, by an appeal to the courts; the other is forcible, by an appeal to arms. When the subject is seriously considered, it will appear that restrictions upon the power of the courts to enforce peaceably the guarantees of the Constitution will end inevitably in the reign of force and violence. Under conditions of force and violence, justice is silent and the strongest prevails. Our forefathers had seen what that meant by the experience of the despotic governments on the Continent of Europe. The principles of the American Constitution, which have been referred to, were no doubt greatly endeared to the people by their observation of the excesses of the French Revolution. There they saw a legislative body unrestrained by constitutional guarantees, depriving individuals of life, liberty and property without process of law. They observed a consequent reign of terror, and they saw that this reign of terror ended in a despotic government. A nation of honest, hardworking industrious people will not permanently submit to be robbed and plundered by a legislature. Better, they have always thought, the absolute rule of one man which gave them security, than the arbitrary power of two hundred men which gave them spoliation.

Just now it is fashionable to expatiate upon the action of courts in setting aside legislative statutes. But lawyers should remember that there have been many instances in the history of this country when legislatures have been partisan, oppressive and corrupt. Let me mention a few.

In the early days of the Republic all franchises were granted by special act. When the Federalists controlled the New York Legislature they refused to grant a banking franchise to their political opponents. The bank of the Manhattan Company is a perpetual reminder that Burr, under cover of a new franchise to supply the City of New York with water, obtained a banking franchise for his political supporters. Similar abuses existed in all the states. Constitutional amendments were therefore adopted which prohibited the formation of corporations except under general acts.

Again in many states the vast power of taxation has been exerted corruptly or unequally and constitutional amendments to prevent this abuse have been adopted. To what end is this, unless the courts can enforce them.

Just after the Civil War an experiment was tried with legislatures which in fact had absolute power. The legislatures which were established under the Federal government in the states lately in secession were, to all practical purposes, not controlled by the courts, for the judges appointed in those evil days showed no disposition to limit the power of the local legislatures. Indeed federal officials were expressly instructed by the War Department to disregard orders made by the local courts. The result was a reign of corruption and oppression that proved intolerable. In 1877 by general consent the Federal troops were withdrawn from the Southern States and the white people of those states were permitted to manage their affairs in their own way. They went back to the old American principle of legislatures with powers limited by written constitutions, and with courts able and willing to enforce such limitations and vindicate the rights of the people as against legislative excess. Then for the first time prosperity came back to the Southern States.

Not only the whites, but the blacks began to accumulate property and the honest, hard working man for the first time since the war, was able to reap the reward of his labors.

One recent instance remains to be mentioned. Within a year the Senate of the United States, acting in conformity to the general public sentiment of the country, set aside the election of Senator Lorimer by the Legislature of Illinois on the ground that it was obtained from that Legislature by the corrupt use of money.

This brief story of legislative corruption and usurpation might be greatly extended. No one who studied it can seriously urge that the power of the courts to deal with unconstitutional legislation should be limited.

The fundamental fallacy of the prophets of this new dispensation lies in the assumption that the legislature is the people and that a temporary majority is infallible. The legislature is but one agency which may or may not correctly represent the will of the people. And a majority at one election may be wrong. Therefore our government recognizes the sacredness of certain individual rights which no temporary majority can impair.

One curious inconsistency should, in conclusion, be pointed out in this new Constitution of Ohio.

Beside the numerous restrictions upon legislative power, which it retains, it contains this new section:

Article One, Section Nineteen A. "The amount of damages recoverable by civil actions in the courts for death caused by the wrongful act, neglect or default of another, shall not be limited by law." Article Two, Section Thirty-five authorizes the legislature "to provide compensation to workmen for death occasioned in the course of such workmen's employment," and to take away "any or all right of actions or defense from employees and employers."

The theory of all workmen's compensation acts is that the present system of compensating workmen or their families for injuries incurred in the course of their employment is radically defective, that the risk of such injury should be considered a risk of business and should be compensated for by the employer as part of the necessary expense of such business. In order to make this effective it is necessary on the one hand to provide that compensation shall be made irrespective of negligence on the part of the employer, and that on the other hand the amount shall be limited. Otherwise you would have the injustice of a fixed liability payable at all events and in all cases by the employer, and on the other hand a right to sue and appeal to a jury, on the ground of alleged negligence for an unlimited amount.

It certainly does appear strange that the people of Ohio, distrustful as they appear to have been of the action of the courts of that state, should still have been unwilling to entrust to the legislature full regulation of the important and difficult subject of compensation to workmen for injuries incurred in the course of their employment.

This prohibition in the earlier clause of the new constitution tends to continue a great evil which has come into existence within the last fifty years: that is to say the mass of litigation in negligence cases. Such suits undoubtedly were brought fifty years ago, but their number was small and they took very little time of the court. In many counties now they constitute one-half, at least, of the litigation. The number of accidents has greatly increased, owing to the complexity of the machinery that has been invented and put in use to meet the constantly increasing demands of civilization. In consequence of these accidents, there has grown up a class of lawyers commonly known as "ambulance chasers," who make a specialty of this sort of litigation and who have runners keen to learn and quick to follow the results of accidents and to secure, upon contingent fees, the right to bring a suit in consequence thereof. This evil has become so great and the

consequent disgrace to the profession so signal, that the American Bar Association and the Bar Association of the State of New York, has each taken action and adopted the following canon of ethics:

Canon of Ethics, No. 27, adopted by the American Bar Association, reads in part as follows:

"It is equally unprofessional to procure business by indirection through touters of any kind."

The Canon as adopted by the New York State Bar Association is in the same language.[3]

Canon of Ethics 28 of the latter Association is also in point and is the same as the similar canon of the American Bar Association:[4]

"It is disreputable * * * to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action, in order to secure them as clients, or to employ agents or runners for like purposes."

Bar associations in many states have adopted similar canons.

It will be in vain that lawyers who esteem the honor of their profession, endeavor to remove the evil thus referred to if legislatures are prohibited by constitutional enactment from removing the cause of the evil.

In conclusion let me quote from an opinion of Mr. Justice Moody, delivered in the case of Chambers v. Baltimore & Ohio Railway Company, 207, U. S. 142-148, which deserves to be inscribed in every court room in the land.

"The right to sue and defend in the courts is the alternative of force. In an organized society it is the right, conservative of all other rights and laws at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship."

It is to be hoped that no other state will follow the example of Ohio by limiting the scope of judicial power, and that the people of that great state will soon return to the wiser methods, under which the United States have successfully united Liberty and Law.

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(3) Report New York State Bar Assn., 1910, p. 892.

(4) Ibid., p. 892.

STATUTE OF LIMITATIONS—NEW PARTY.

BERESH et al. v. SUPREME LODGE KNIGHTS OF HONOR.

Supreme Court of Illinois, June 21, 1912.
Rehearing Denied Oct. 3, 1912.

99 N. E. 349.

A mere change in a party to an action does not of itself change the cause of action or ground of recovery, and, unless the cause of action is a new one, the amended declaration is not subject to the statute of limitations, and the substituting of the party having the legal right to sue on the claim for which the action has been brought, instead of another improperly named as plaintiff, is not the "commencement of a new action" within the statute of limitations.

FARMER, J.: October 3, 1893, Eugene Beresh became a member of a subordinate lodge of plaintiff in error and a certificate for $2,000 was issued to him, payable at his death to Otto and Freddie Goldberger, who were stated in the application of Beresh to be his nephews. Beresh died in December, 1893, and in 1895 Otto and Freddie Goldberger, for use of Anna Beresh, brought suit in the Cook circuit court against plaintiff in error and recovered a judgment for $2,300, which was reversed by this court and the cause remanded. Supreme Lodge Knights of Honor v. Goldberger, 175 Ill. 19, 51 N. E. 647. On the case being reinstated in the trial court the plaintiff in error pleaded that the Goldbergers were not nephews of Beresh, nor in any way related to or dependent upon him, and were not proper beneficiaries. Demurrers to these pleas were overruled, and on December 10, 1903, an amended declaration was filed, in which the widow, Anna Beresh, and an adopted son of the deceased, Edward Beresh, were made plaintiffs. To the amended declaration plaintiff in error pleaded the 5-year statute of limitations. To this plea defendants in error filed three replications: (1) That the amended declaration stated the same cause of action as the original declaration; (2) that the amended declaration was filed within two years after Edward Beresh became 21; and (3) that the action was on a written instrument and accrued within 10 years. Demurrers were sustained to the first and third replications, and overruled as to the second. Plaintiff in error elected to stand by its demurrer

to the second replication, and judgment was rendered against it for $2,525. The judgment having been affirmed by the Appellate Court, the case is brought to this court for review by certiorari.

Plaintiff in error insists that the amended declaration set up a new and different cause of action from that stated in the original declaration, that the cause of action stated in the amended declaration is not upon a written instrument or other evidence of indebtedness in writing, and that although one of the plaintiffs was under 21 years of age when this cause of action accrued, and the amended declaration was filed within 2 years after he attained his majority, his co-plaintiff was under no disability when the action accrued, and, as the action is a joint one, both are barred by the 5-year statute of limitations. The Appellate Court, as appears from its opinion, reached the conclusion that the exception in the statute of limitations in favor of minors, authorizing them to bring an action within 2 years after attaining their majority, was applicable; that the cause of action was not barred as to Edward Beresh until 2 years after he attained his majority, and the statute could not be pleaded to the action brought jointly by him and another, who was under no disability when the cause of action accrued. That court did not pass upon the cross-errors assigned by appellees there, who are defendants in error here.

(1) The first cross-error assigned by defendants in error raises the question of the correctness of the trial court's action in sustaining the demurrer of plaintiff in error to their first replication to the statute of limitations. That replication, after setting out the facts as to the membership and death of Eugene Beresh, the suit by the Goldbergers for the use of the widow, and the substitution of the widow and son as plaintiffs, instead of the Goldbergers, averred that the cause of action set out in the amended declaration is the same cause of action set out in the original declaration. The question raised by this replication could have been raised by demurrer to the plea; but as the court, on motion of defendants in error, ordered the demurrer of plaintiff in error to the replications carried back to the plea, and upon the hearing of the demurrer overruled it, to which the defendants in error excepted, we think the question was saved for review.

(2, 3) It is contended by plaintiff in error that the suit was brought by the Goldbergers for the use of the widow upon the benefit certificate, that the constitution and by-laws of plaintiff in error were not pleaded in the declaration, and that the amended declaration was upon a different cause of action. The amended declaration sets out the membership of Eugene Beresh, the issuance of the certificate in which the Goldbergers (described as nephews) were designated as beneficiaries, the death of Eugene Beresh, and then avers that the Goldbergers were not nephews of Eugene Beresh; that they were not members of his family, blood relatives, nor dependent upon him, and never held any relation to him that entitled them to be named as beneficiaries; that at the time of the death of Eugene Beresh he was in good standing in the order and had complied with all its rules, and plaintiffs in the amended declaration were his wife and lawfully adopted son, the only members of his family; that they were living with and dependent upon him, and were entitled to the benefit fund. We do not think the amended declaration is upon a different cause of action from that set out in the original declaration. That the suit by the Goldbergers was brought as the beneficiaries named in the benefit certificate, and that the right of plaintiffs in the amended declaration to recover is not based upon their designation in the certificate as beneficiaries, is not conclusive that the two declarations set out different causes of action. By statute, as well as by the constitution and by-laws of plaintiff in error, only certain classes of persons were eligible to be named as beneficiaries. Where a person is designated as beneficiary who is outside of the eligible classes, upon the death of the member the benefit fund will not lapse, but the law will dispose of it for the benefit of the classes authorized to be designated as beneficiaries. Palmer v. Welch, 132 Ill. 141, 23 N. E. 412; Baldwin v. Begley, 185 Ill. 180, 56 N. E. 1065.

In Supreme Lodge Knights of Honor v. Menkhausen, 209 Ill. 277, 70 N. E. 567, 65 L. R. A. 508, 101 Am. St. Rep. 239, suit on a benefit certificate issued by the defendant to Elizabeth Menkhausen was brought by her husband, Gustav, who was named as beneficiary. The defendant filed a plea alleging plaintiff willfully murdered his wife, was tried, convicted, and sentenced to be hanged, but the governor commuted the sentence to life imprisonment, and he was then in the penitentiary. There was a verdict and judgment for the defendant. Another suit was then brought to recover the benefit, by the children of Elizabeth Menkhausen. The declaration alleged the incorporation of defendant under the laws of Kentucky, Missouri, and Indiana, for the purpose of providing a relief fund to be paid on the death of a member to such member of his

family or person related to or dependent upon him as he might direct, and that the by-laws provide the benefit might be made payable to the wife, husband, children, or to others within the classes named. The declaration set out the former suit by the husband, the issue made by the plea, that it resulted in a judgment for the defendant, and alleged plaintiffs were the only children of Elizabeth Menkhausen, and that they were members of her family and dependent upon her for support. Elizabeth Menkhausen died November 9, 1893. The suit by her husband was begun August 6, 1895. The suit by the children was brought in 1902. A demurrer by defendant to the declaration was overruled, and, defendant electing to stand by the demurrer, judgment was rendered for plaintiffs. The judgment was affirmed by the Appellate Court and by this court. This court said it did not regard the action as upon the certificate; that the suit was for the recovery of the benefit which the defendant undertook by its constitution and by-laws to pay to the person, within certain classes, who should be designated by the member; that the husband of Elizabeth Menkhausen had, by murdering his wife, made himself ineligible as a beneficiary, and the benefit was payable to the children of Elizabeth Menkhausen.

(4) The cause of action is the obligation of plaintiff in error to pay the benefit agreed upon with the member to a person or persons eligible under its constitution and by-laws to be designated as beneficiary, provided the person so designated is eligible. The designation by a member of an ineligible person does not relieve the order of any obligation or liability to pay the fund to any one, but only relieves it of any liability to the person designated. The member may choose the person he desires to be made beneficiary from several classes, and the undertaking of the lodge or order is that it will pay the amount agreed upon to the person designated in the certificate if he is within the eligible classes, and, if he is not, it will pay it to some proper person wthin the eligible classes. In the original declaration the Goldbergers sought to recover upon the obligation in their names for the benefit of their assignee, because they were designated as beneficiaries in the certificate. As they were outside the classes authorized to be named as beneficiaries, the action did not accrue to them upon the death of Eugene Beresh. When their ineligibility was disclosed defendants in error were substituted as plaintiffs; the cause of action still being the obligation of plaintiff in error, under its membership agreement with Eugene Beresh and its constitution and by-laws, to pay the benefit fund to some one or class authorized to be named as a beneficiary. The amended declaration introduced no new cause of action, but substituted the names of defendants in error as the parties to whom the same cause of action counted upon in the original declaration accrued, instead of the parties who were made plaintiffs in said original declaration. "A mere change in a party to a suit does not, of itself, change the cause of action or ground of recovery, and, unless the cause of action is a new one, the amended declaration is not subject to the statute of limitations." Metropolitan Life Ins. Co. v. People, 209 Ill. 42, 70 N. E. 643. "Substituting the party having the legal right to sue for the claim for which the action was brought, instead of another party improperly named as plaintiff, is in no sense commencing a new action against defendant." United States Ins. Co. v. Ludwig, 108 Ill. 514. If we are correct in this conclusion, it necessarily follows that the statute of limitations was not a good plea, and the demurrer of the plaintiff in error to the replication ordered carried back to the plea should have been sustained.

The question whether, if the amended declaration did set up a new cause of action, the statute of limitations was a good plea, has been thoroughly briefed and ably and interestingly argued by counsel for plaintiff in error; but in the view we hold that question does not become material and need not be discussed.

(5) The trial court allowed interest upon the $2,000 benefit fund from the date of filing the amended declaration, and plaintiff in error contends this was erroneous, even if defendants in error were entitled to judgment. We are of opinion that, if defendants in error are entitled to recover, they are also entitled to interest from the time of filing the amended declaration.

(6) Notwithstanding the errors of the circuit and Appellate Courts, they reached the correct result, and the judgment, in our view of the law, being right, it is affirmed.

Judgment affirmed.

NOTE.—*Making New Party as Regards Statute of Limitations.*—The instant case seems to have ruled, practically, that one having no right of action may commence a suit and thereby arrest the running of the statute of limitations, if he have even a color of claim for recovery, and that this running having been arrested, the real party in interest may be substituted for him in the pleading. It is quite radical, indeed, to say this amendment may be made at all, and when it is declared, that it also may be done and relate back to the beginning of an unauthorized suit, this is still more extraordinary.

The case of Metropolitan Life Ins. Co. v. People, 209 Ill. 42, 70 N. E. 643, which is cited by

the instant case, had no such question in it as here, but it was where there was a suit under a statute, against an insurance company and its agent for a penalty, both being *jointly* and *severally* subject to the penalty. Plaintiff amended by substituting the name of one agent for another. The court said the name of any agent was not essential in any way. Judgment was only rendered against the insurance company and the time never arrived for the substituted agent to make any objection.

United States Ins. Co. v. Ludwig, 108 Ill. 514, also relied on by the instant case, does support it quite well, but it is not entirely on all-fours with the instant case. Thus in the cited case an action was brought by the guardian of two minors of certain insurance policies and it was held on writ of error that the action should have been brought by the administrator of the assured. An amendment was made substituting such administrator, as party plaintiff, for the guardian and the plea of the statute was set up. The court held that this was allowable under the code permitting an amendment, either in form or substance, for the furtherance of justice. The court said: "So far as defendant is concerned, this suit or action was commenced against it at the time of the issuing and the service of the summons, which was within eighteen months after the death of the assured. The assignees, in whose names the action was originally commenced, are the parties beneficially interested in this judgment, and the amendment substituting the administrator, in whom was the legal right to sue, as plaintiff, was simply to enable them 'to sustain the action for the claim for which it was intended to be brought' and nothing more."

Nothing of that kind may be said here. The instant suit was brought by a party for her individual benefit—as the real party in interest. There was no privity whatever between the original plaintiffs and at least one of the substituted plaintiffs, and even as to the other the statements in the opinion make it very doubtful, because the Goldbergers were objected to as not being competent to be named as beneficiaries. On this objection competent beneficiaries were substituted as plaintiffs. In the instant case the suit as first brought was independent of the real parties in interest. In the cited case the beneficiaries were always the real parties in interest.

In a recent Illinois case, not cited by the instant case, in which another child of a deceased miner was added as plaintiff, and the statute was pleaded, on the theory that not until the bar had fallen was there a suit by all of the necessary parties to the action. But the court cited the Practice Act as authorizing amendment at any time before final judgment "introducing any party necessary to be joined as plaintiff or defendant," etc. It seemed to be thought the attempt by parties rightly entitled to sue, along with others whom they failed to join, arrested the statute. Hougland v. Avery Coal Co., 246 Ill. 609, 619, 93 N. E. 40. That is a different case from the instant case, where there was a suit by those not entitled to be plaintiffs at all, and there was no specific statute to cover such a case.

The instant case seems, therefore, to extend even the very liberal rule in Illinois a great ways, a length to which the reasoning in the cases we have referred to seems opposed.

But the principle seems plainly condemned elsewhere. Thus in Boughner v. Sharp, 144 Ky. 320, 138 S. W. 375, the facts show that an action was brought by the husband and heir at law of a decedent and her administrator was joined as a party plaintiff. The latter was barred by the statute, and it was held that the former had no right to bring the action at all. It was said: "The pendency of the action by persons who were not authorized to bring it did not affect the running of the statute; and the cause of action being barred by limitation, the circuit court properly dismissed the petition." That case was rather inside, than without the ruling in the instant case, because there was a sort of privity between the debtor and the heir at law and between the latter and the administrator.

In Waltz v. Pennsylvania R. R. Co., 216 Pa. 165, there was an amendment in a suit by a father for the death of his child, the right of action being given to the parents. By amendment the wife was added as a party. This was said to be harmless because the court, on the initiative of the defendant, treated the action as one "to find full compensation and damages so far as affects both parents." There is here seen a very guarded ruling.

In Johnson v. Phoenix Bridge Co., 197 N. Y. 316, 90 N. E. 953, there was an action brought by one as administratrix of decedent, when the right of action was only in the widow and children as individuals. After the bar would have attached there was an amendment striking out the words showing representative capacity and adding the names of children as joint plaintiffs. The court, after first saying that all were not necessary parties, then ruled that the amendment striking out left the action in favor of the widow individually unaffected by the statute, this ruling being on its view of its practice act, but it refused to allow the amendment making the children parties, holding the statute had never been arrested as to them. It was held that in so far as they were added, there was an amendment changing substantially the claim.

In Atlanta, K. & N. Ry. Co. v. Hooper, 92 Fed. 820, 35 C. C. A. 24, Taft, C. J., held that where an administrator brought a suit for the benefit of one person as an intestate's next of kin, it is a change of the cause of action to substitute for that person the name of another as next of kin and the statute of limitations ran against the substituted person. He said: "The next of kin for whose benefit the suit is brought are the real plaintiffs. * * * To change the beneficiary changes the suit, the amount of recovery and states a new and different cause of action." Lurton, C. J., and Severens, D. J., concurred.

Where an action was brought by the Treasurer of the State and it was held that it should have been brought by the State itself, it was held allowable to amend because this leaves the action "by the same party and for the same cause of action from its inception to its close." McDonald v. State of Nebraska, 101 Fed. 171, 41 C. C. A. 298.

It seems to us we have proceeded far enough to show the instant case must be without any reasonable precedent to support it. Certainly it appears that a recovery by one not entitled to sue at all would not be for another's benefit, but for his own benefit, and, his failure to recover would not bind that other as *res judicata*. C.

BAR ASSOCIATION MEETINGS—WHEN AND WHERE TO BE HELD.

CALIFORNIA—San Diego, November, 1913.
COLORADO—Colorado Springs—probably in July, 1913.
FLORIDA—Miami, February 6 and 7, 1913.
IOWA—Sioux City, June 26 and 27, 1913.
KANSAS—Topeka, January 27 and 28, 1913.
MAINE—Augusta, January 8, 1913.
MASSACHUSETTS—Springfield, December 19, 20, 1912.
MISSOURI—Kansas City, 3rd and 4th week in September, 1913.
MISSISSIPPI—Greenwood, first Monday in May, 1913.
NEBRASKA—Omaha, December 27 and 28, 1912.
NEW YORK—Utica, third week in January, 1913.
NEW JERSEY—Atlantic City, some time during June, 1913.
OKLAHOMA—Oklahoma City, December 30 and 31, 1912.
OHIO—Probably at Cedar Point, during July, 1913.
OREGON—Portland, November, 1913.
SOUTH DAKOTA—Pierre, January 15 and 16, 1913.
TENNESSEE—Probably in Memphis, during May, 1913.
VERMONT—Montpelier, first Tuesday in October, 1913.
WEST VIRGINIA—Wheeling—date not fixed.
WISCONSIN—Milwaukee, some time during June, 1913.

CORAM NON JUDICE.

AN ANALOGY.

The Parol Evidence Rule and the Doctrine of Conclusiveness of Judgments.

Although the relation between the parol evidence rule and the doctrine of conclusiveness of judgments is somewhat obvious, the absence of comment on it by judges and text-writers makes it seem desirable to state some of the characteristics they have in common. One of the most vexed questions of the law is the application of the parol evidence rule, and a comparison of it with the doctrine of res judicata ought to have some tendency to illuminate the subject, if there is any genuine analogy between them.

The science of evidence has to do with the means of proving the existence of facts, and not at all with the class of facts that may be proved. If this is true, the rule that parol or extrinsic evidence is inadmissible to vary a writing is not a rule of evidence, as the words "parol" and "extrinsic" have no significance in this connection, except to present the idea that the writing must speak for iself, and when these words are eliminated the rule is stated thus:

Evidence is inadmissible to vary a writing. It is not important to ascertain the origin of the rule, whether in business convenience, or the awe inspired by the written word in an age of ignorance of letters, or simply to announce that it is founded in public policy, which is another way of saying that it is the law. This is the modern doctrine on the subject—that it is a rule of law, and not a rule of evidence.

The term "legal acts" or "juristic acts" has been applied to the class of writings subject to the rule. A legal or juristic act is one which is intended to and does have binding effect, as distinguished from mere acts of courtesy, or from illegal acts. There are several classes of legal acts which the law declares with varying degrees of emphasis to be conclusive. First comes the acts of the people as expressed in written constitutions, which are binding on all the people, and not subject, when once adopted, to any form of attack, although always open to construction. Next in order are statutes, which also bind every one, and are only subject to attack as in conflict with the Constitution. Then come judgments of courts, which are binding only on parties thereto and their privies, and are subject to attack in any way that shows their invalidity.

There are, besides, a variety of official acts having a greater or less degree of conclusiveness, such as official surveys, public grants, and officers' returns. These are all acts of a public or official nature; but it is conceived that the parol evidence rule really places private legal acts in the same category. If it is true that this rule may be correctly stated as that evidence is not admissible to vary a written legal act, the rule can have no other meaning than that the act is conclusive. Starting with this theory, and attempting to apply the rules of law relating to judgments to private legal acts, it is surprising how many analogies are discovered.

The parol evidence rule, with its exceptions, may be succinctly stated as follows: A written contract cannot be varied by extrinsic evidence of matters within its scope occurring before or at the time of its execution in a suit between parties or privies, except to show the invalidity thereof or to explain its meaning; but it may be reformed in a direct suit for that purpose.

The following is a general statement of the rule of res judicata and its corollary, the doctrine of collateral attack: A judgment is conclusive of all matters within its scope in a subsequent suit between parties or privies thereto, and cannot be collaterally attacked, except for invalidity; but relief may be had in a direct proceeding.

The parol evidence rule applies only to matter within the scope of the writing. A judgment is only conclusive within the scope of the litigation.

The parol evidence rule applies only to matters occurring before or at the time of the making of the writing. Subsequent transactions varying the writing may always be shown. A matter of contract, being the act of the parties, may be changed by subsequent act; while a judgment, being the act of the court on the rights of the litigants, must stand.

The parol evidence rule applies only between parties and privies, like the rule of res judicata.

The exception that evidence is admissible to show that the act is void is equally applicable to judgments; the doctrine of collateral attack only applying to mere irregularities. That a writing or judgment is void may always be shown in a collateral or direct proceeding.

The exception that extrinsic evidence is admissible to explain the meaning of a writing is a rule of construction applicable alike to judicial, legislative, and private acts. It is obvious that a suit to reform an instrument could not be maintained, if extrinsic evidence were not admissible, and comes clearly within the reason of the rule, applied to judgments, that in a direct proceeding objections may be presented which would be barred on a collateral attack.

Thus far the discussion has been limited to private transactions; but there is a class of cases in which the parol evidence rule is invoked involving legislative, judicial, and official acts. For instance, there is a line of cases holding that extrinsic evidence is incompetent to contradict or control the records of a court, or the journals of the legislature, or the record of the proceedings of a town meeting.

This is, of course, no more than another way of affirming the verity and conclusiveness of such acts and records. To say that the return of an officer is conclusive is to say that extrinsic evidence is not admissible to vary its terms.

The rule against collateral attack on judgments is simply a corollary of the rule of conclusiveness, so that, if what has been said as to the analogy between the parol evidence rule and the rule of conclusiveness is true, the analogy between the parol evidence rule and the rule against collateral attack is complete.

This will be more apparent if the mind is brought to look upon a contract as an adjudication; the forum being the parties to the contract. Then an action on a contract is equivalent to an action on a judgment, in which a defense attacking the judgment is looked upon as a collateral attack. So a defense attacking a contract on which the action is based is a collateral attack on the contract, as distinguished from a suit to reform or cancel, and the rules against parol evidence are but another statement of the rules against collateral attack.

The parol evidence rule might be restated as follows: When a legal act by or between persons sui juris is established or entered into, and this act is evidenced by writing, and no element of fraud or mistake is involved, either in its inception or expression, and it is expressed in terms which make no doubt of its meaning, the writing is conclusive on the parties and their privies.—The Docket.

BOOKS RECEIVED.

The Upas Tree, a new lawyer's novel, by Robert McMurdy, of the Chicago Bar, and illustrated by William Ottman. Price, $1.35, net. Chicago, Ill. F. J. Schulte & Company. Review will follow.

Penal Philosophy, by Gabriel Trade, Late Magistrate and Professor in the College in France, Translated by Rapelje Howell, of the New York Bar, with an editorial preface by Edward Lindsey, of the Warren, Pa., Bar, and an intorduction by Robert H. Gault, Asst. Prof. of Psychology in the Northwestern University, and Managing Editor of the Journal of Criminal Law and Criminology. Price, $5.00 net. Boston, Mass.: Little, Brown & Co. Review will follow.

A CORRECTION.

In article by Philip Walker, of Washington, D. C., entitled "Protection of Laborers and Materialmen on Federal Public Work," 75 Cent. L. J. 367, the notes in the text of this article were wrongly numbered and should read as follows:

The second 5 should read 6; 6 should read 7; 7 should read 8; 8 should read 9; 9 should read 10; 10 should read 11; 12 should be inserted after "passage" in line 2, par. 2, page 369; 11 should read 13; 12 should read 14; 13 should read 15; 14 should read 16; 15 should read 17; 16 should read 18; 17 should also read 18; 18 should read 19; 19 should read 20; 20 should read 21; 21 should read 22; 22 should read 23; 23 should read 24; 24 should read 25; 25 should read 26; 26 should read 27; 27 should read 28; 28 should read 29; 29 should read 30; 30 should read 31; 31 should read 32.

HUMOR OF THE LAW.

Magistrate—What sort of a man was it that you saw commit the assault?

Witness—He was a small, insignificant creature, your Honor, just about your size.—Minneapolis Journal.

Andrew C. Maroney, former Assistant Circuit Attorney of St. Louis, tells this story: "Thomas B. Harvey, Circuit Attorney-elect, was the most resourceful and determined fighter we had to meet in criminal prosecutions. He was defending a client charged with receiving stolen goods. The only defense he had was good character and he called an Irish merchant.

"'Did you ever hear anything against the character of this defendant?' Harvey asked the witness.

"'Nivver a thing, nivver a thing,' said the witness, 'except I did hear he had a crooked fire in Illinois about 10 years ago.'"

The case had been concluded, and the attorney who had defended a man on a charge of assault rose to make his final address to the jury which was to decide his client's fate. He was a flowery talker and his argument ran something like this:

"It was a beautiful evening. All nature was smilingly at rest. The birds twittered their farewell to the sun, knowing that the moon would soon be up. And just at this time, gentlemen of the jury, in this peaceful environment, the prosecuting witness came out from behind a billboard and called my client a liar."

The jurors laughed and convicted.—Kansas City Journal.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Bankruptcy**—Corporations.—A corporation engaged principally in the business of renting films for moving pictures is not engaged in trading or a mercantile pursuit which renders it subject to adjudication as an involuntary bankrupt under Bankr. Act July 1, 1898, § 4b, as amended by Act Feb. 5, 1903, § 4.—In re Imperial Film Exchange, C. C. A., 198 Fed. 80.

2.——Delay.—Mere delay in bringing his application on for hearing held not a ground for refusing a bankrupt a discharge.—In re Glasberg, C. C. A., 197 Fed. 896.

3.——Insurance.—Proceeds of an insurance policy collected by a mortgagee under a preferential mortgage given by a bankrupt held a substitute pro tanto for the mortgage and recoverable by the bankrupt's trustee.—Brown City Savings Bank v. Windsor, C. C. A., 198 Fed. 28.

4.——Jurisdiction.—A court of bankruptcy has ancillary and exclusive jurisdiction to hear and determine all adverse claims to property in the possession of a trustee in bankruptcy as a part of the assets of the estate which he is administering, but not to determine conflicting claims to a water right.—Bear Gulch Placer Mining Co. v. Walsh, U. S. D. C., 198 Fed. 351.

5.——Laches.—A delay of more than a year by a trustee before asking for a re-examination of a claim previously allowed is not of itself such laches as to bar the right.—In re Globe Laundry, U. S. D. C., 198 Fed. 365.

6.——Preference.—The fact that the owner of the capital stock of a bankrupt corporation, who was also, until within a few months prior to the bankruptcy, president of a creditor corporation, may have had knowledge of the bankrupt's insolvency while such president, held not to charge the creditor with such knowledge, nor, in the absence of further evidence, with reasonable cause to believe that subsequent payments were intended as preferences, so as to render them voidable as such.—Benner v. Blumauer-Frank Drug Co., U. S. D. C., 198 Fed. 362.

7.——Rescission.—Bankruptcy Act July 1, as amended by Act June 25, 1910, held not to deprive a seller of his right in Colorado jurisdiction, to rescind the sale for fraud and reclaim his goods which came into the hands of the trustee in bankruptcy.—In re J. S. Appel Suit & Cloak Co., U. S. D. C., 198 Fed. 322.

8.——Separate Trustees.—A court of bankruptcy has discretionary power to appoint separate trustees for the estates of a bankrupt partnership and of an individual partner, but such power should be exercised only in case of special and peculiar necessity.—In re Currie, U. S. D. C., 197 Fed. 1012.

9.——State Courts.—The national bankruptcy act does not prohibit the state from preventing a corporation from conducting business for acts without the contemplation of bankruptcy, and to take control of the affairs of the corporation, terminate its business, and pay its creditors; and where the state does so for acts not within the bankruptcy act the proceedings are not in bankruptcy.—Continental Building & Loan Ass'n. v. Superior Court, in and for City and County of San Francisco, Department No. 1, Cal., 126 Pac. 476.

10. **Banks and Banking**—Directors.—A director or officer, when he is not specially authorized by the board of directors or stockholders, is not empowered to prevent the reception of deposits, or to close a bank which has long been doing business and is receiving deposits, merely because he is such officer.—Eureka County Bank Habeas Corpus Cases, Nev., 126 Pac. 655.

11.——Laches.—The principle that a depositor will be estopped by laches in failing to promptly notify the bank of forgery of a check is not applicable, where the bank had notice when it paid the checks that they were drawn without authority.—Crab v. Citizens' State Bank, Idaho, 126 Pac. 520.

12. **Bills and Notes**—Holder.—An assignee of a nonnegotiable duebill acquires it subject to any defense that the maker may have, and the mere fact that an assignment is made from a father to his son is no fraud on the makers.—Owsley v. Miller, Ky., 149 S. W. 935.

13.——Non-negotiability.—An order drawn by one on his deposit in a savings bank, which, though on its face payable on demand, was, by reason of a requirement of the bank not to be paid till after 30 days' notice to it, and by condition of the deposit required presentment with it of the depositor's passbook, of which facts its indorsee had notice, is merely a nonnegotiable chose in action.—First Nat. Bank of San Francisco v. Golden, Cal., 126 Pac. 498.

14. **Brokers**—Breach.—A landowner's refusal to name the day for a public sale of land which a broker had contracted to develop and sell at public or private sale within a year held not to constitute a breach of the broker's contract of employment.—Phillips v. Troutman, U. S. D. C., 197 Fed. 325.

15.——Burden of Proof.—Real estate broker, to recover commission, must either show a sale made to the purchaser procured by him, or that the purchaser was able and willing to buy, and that failure to sell was through no fault of the

broker or customer.—Stevenson v. Bannan, Pa., 84 Atl. 447.

16. **Cancellation of Instruments**—Burden of Proof.—Canceling an executed conveyance is an exercise of extraordinary power in courts of equity, and will not be granted unless the grounds therefor clearly appear.—Culton v. Asher, Ky., 149 S. W. 946.

17. **Carriers of Goods**—Bill of Lading.—Transferee of unconditional bill of lading by indorsement and delivery for value, containing words "not negotiable," held to have no action against carrier for conversion.—Glass v. Southern Pacific Co., 137 N. Y. Supp. 261.

18.——Bill of Lading.—A bank which furnished the credit to pay for imported goods, taking bills of lading in its own name, held the legal owner of the goods, and its title was not divested by delivery of the goods to the importer on a trust receipt, so as to enable the importer to create a valid lien thereon.—Century Throwing Co. v. Muller, C. C. A., 197 Fed. 252.

19.——Common Carrier.—A common carrier is one who openly professes to carry for hire the goods of all persons who comply with its terms, while a private carrier is one who takes goods for transportation in a particular case.—The Cape Charles, U. S. D. C., 198 Fed. 346.

20.——Definite Route.—Where a bill of lading for the transportation of live stock specifies a definite route, the carrier is not bound to forward by a different route, on transportation by the specified route becoming impracticable, as where a quarantine is encountered.—Norfolk & W. Ry. Co. v. Langdon, Md., 84 Atl. 473.

21.——Rates.—A carrier has the right, if rates have been fixed too low in the past, to meet changed conditions by increasing them if the increase is reasonable, and a state statute, which denies it that right and forces it to continue in force rates which are unremunerative and confiscatory, is unconstittuional and void.—U. S. D. C., 197 Fed. 954.

22.——Rates.—Freight rates being creatures of law and of its administration, and not of contract, a shipper could not, by contract at the time of his inbound shipments, acquire a vested right to a through rate applicable to both inbound and outbound shipments.—Wilmington Ry. Co. v. Taylor, U. S. D. C., 198 Fed. 159.

23.——Stoppage in Transitu.—The retaking of possession of goods by a carrier after their delivery to a purchaser, because of nonpayment of freight, held not an exercise of the right of stoppage in transitu, which inured to the benefit of the seller.—In re Dancy Hardware & Furniture Co., U. S. D. C., 198 Fed. 336.

24. **Carriers of Live Stock**—Interstate Commerce.—Where an interstate shipment of horses and mules is made, the law of the state where the contract of shipment is made governs the carrier's liability for negligence.—Elliott v. Atlantic Coast Line R. Co., S. C., 75 S. E. 886.

25. **Carriers of Passengers**—Breach of Contract.—Where, after full explanation of the peculiar circumstances, a carrier contracts to convey a passenger by a particular route or under specified conditions, the passenger may recover any damages sustained by breach thereof.—Southern Ry. Co. v. Daughdrill, Ga., 75 S. E. 925.

26. **Chattel Mortgages**—After-Acquired Property.—Taking possession by the mortgagee of after-acquired chattels which by the mortgage is pledged to secure the mortgagee subjects such property, except as to prior purchasers and attaching crditors, to the obligation of the mortgage.—Johansen Bros. Shoe Co. v. Alles, C. C. A., 197 Fed. 274.

27. **Citizens**—Non-Citizens.—Where a citizen of a state may go into the courts of the state to defend his property against the illegal acts of its officers, a citizen of another state may invoke the jurisdiction of the federal courts to obtain the same relief.—Chicago, B. & Q. R. Co. v. Oglesby, U. S. D. C., 198 Fed. 153.

28. **Commerce**—Employees.—A section hand, injured while repairing a switch so as not to delay interstate trains, held engaged in interstate commerce at the time, within the Employer's Liability Act.—Jones v. Chesapeake & O. Ry. Co., Ky., 149 S. W. 951.

29. **Constitutional Law**—Corporations.—Corporations are within the fourteenth amendment of the federal Constitution, so that, subject to state can deny them the equal protection of the laws.—Wilmington City Ry. Co. v. Taylor, U. S. D. C., 198 Fed. 159.

30.——Legislative Construction.—A legislative construction of a constitutional provision, though not binding on the court, is entitled to great consideration.—McDowell v. Burnett, S. C., 75 S. E. 873.

31. **Contracts**—Breach.—Where a railroad construction contract bases the contractor's compensation on wages paid by him plus a percentage thereon, he cannot treat the railway company's refusal to continue to pay unreasonably high wages as a breach of the contract.—Murray Bros. Co. v. Aroostook Valley R. Co., Me., 84 Atl. 457.

32.——Construction.—The apparent mutual assent of the parties, essential to the formation of a contract, must be gathered from the language employed by them.—Williams v. A. C. Burdick & Co., Ore., 126 Pac. 603.

33.——Forfeiture.—Courts will not ordinarily construe stipulations in a contract as conditions precedent, especially where such construction will work a forfeiture.—Lucy v. Davis, Cal., 126 Pac. 490.

34.——Substantial Performance.—Failure of a contractor to perform in slight particulars will not defeat recovery, if plaintiff acted with a bona fide intention of performing the whole contract, and the other party received the fruits of the work done.—Pressey v. McCornack, Pa., 84 Atl. 427.

35. **Corporations**—Directors.—Directors of a corporation are trustees of its property for the benefit of the corporate creditors, as well as shareholders; it being their duty to administer the trust for the benefit of all parties interested.—Pender v. Speight, N. C., 75 S. E. 851.

36.——Illegality of.—A corporation is not illegal, unless it is shown that the end it has in view is illegal, or the means whereby it proposes to attain that end is illegal.—New York Motion Picture Co. v. Universal Film Mfg. Co., 137 N. Y. Supp. 278.

37.——Statutory Conditions.—The right to form a private corporation can only be acquired from the state; and the Legislature granting the privilege may prescribe the conditions on which the right is to be exercised.—People v. Mackey, Ill., 99 N. E. 370.

38.——Ultra Vires.—Each state may determine what powers shall be possessed by cor-

porations organized under its authority, and the effect that shall attach to acts done by corporations beyond their powers.—Elliott v. Atlantic Coast Line R. Co., S. C., 75 S. E. 886.

39. **Courts**—Judicial Notice.—The courts of the United States take judicial notice of the Constitutions and laws of the states.—Ritterbusch v. Atchison, T. & S. F. Ry. Co., C. C. A., 198 Fed. 46.

40. **Criminal Law**—Fabricating Defense.—In a prosecution for bribery, circumstantial evidence to show conspiracy on the part of the defendant and others to fabricate a defense is competent in chief.—State v. Huffman, Ohio, 99 N. E. 295.

41.——Judicial Notice.—Courts will take judicial notice of public acts, general and local, passed by the state legislature, but not of private laws or ordinances of a city or village.—People v. Quider, Mich., 137 N. W. 546.

42. **Corporations**—Winding Up.—Suit to wind up the affairs of a corporation must be brought in the jurisdiction where the corporation was organized.—Miller v. Hawkeye Gold Dredging Co., Iowa, 137 N. W. 507.

43. **Crops**—Fructus Industriales.—Growing crops of grain are fructus industriales, and growing grain is not included in the definition of land.—Bjornson v. Rostad, S. Dak., 137 N. W. 567.

44. **Damages**—Aggravation.—The damages recovered for personal injuries must be confined to the actual injuries suffered by plaintiff, and cannot be augmented by proof that others will suffer because of the injuries.—Eoff v. Spokane, P. & S. Ry. Co., Wash., 126 Pac. 533.

45. **Dedication**—Plats.—Where an owner lays out his land into building lots and streets, and exhibits a map defining them, and sells lots as bounded by the streets, there is a dedication of the streets to the use of the public.—Newport Pressed Brick & Stone Co. v. Plummer, Ky., 149 S. W. 905.

46. **Deeds**—Confidential Relation.—It is not necessary that actual fraud appear in order to require the setting aside of a conveyance of the greater part of the grantor's estate to one occupying a confidential relation towards him.—Matthaei v. Pownall, Pa., 84 Atl. 444.

47.——Plats.—When a conveyance refers to a plat, the plat becomes a part of the conveyance as if copied in the deed, and is regarded as furnishing as true a description of the boundaries and dimensions of the lots as if such dimensions were written out in the deed.—Read v. Bartlett, Ill., 99 N. E. 345.

48. **Descent and Distribution**—Lex Rei Sitae.—The transmission and descent of real estate is governed by the laws of the country or state in which it is situated.—Crossett Lumber Co. v. Files, Ark., 149 S. W. 908.

49. **Divorce**—Alimony Installments.—Where a husband was ordered to pay a specified sum in installments for the support of his child, the court should have retained the case on the docket to secure payment, instead of providing that on the failure to pay one installment the whole should become due.—Gilbert v. Gilbert, Ky., 149 S. W. 964.

50.——Counsel Fees.—A wife, without funds to pay counsel and expenses to litigate an appeal, is entitled to an allowance for counsel fees and expenses.—Buckner v. Buckner, Md., 84 Atl. 471.

51.——Grounds for.—Where a husband threatened to kill his wife, and without reason accused her of infidelity, and by fraud and duress obtained her separate property without consideration, the court properly granted to her a divorce.—Wickland v. Wickland, Cal., 126 Pac. 507.

52.——Intoxication.—While the temperate use of intoxicants, or even occasional drunkenness, is not a statutory ground for divorce, occasional intoxication, accompanied by cruel conduct and abusive language, may constitute extreme cruelty under the statute.—Hall v. Hall, Mich., 137 N. W. 536.

53. **Ejectment**—Dismissal of Action.—In the absence of a statute to the contrary, the rules as to dismissal of actions in general, and the rules as to entry of a nonsuit, apply to the actions of ejectment.—Aetna Life Ins. Co. v. Hoppin, Ill., 99 N. E. 375.

54. **Election of Remedies**—Cestui Que Trust.—Suit by cestui against trustee alone held not to bar his right of action against persons receiving money from the trustee with notice of the trust.—Stratton v. Stratton's Adm'r., Ky., 149 S. W. 900.

55. **Estoppel**—Deeds.—A map or plat referred to in a deed may become a part thereof, and the parties be estopped from denying the correctness of such portions of the contents of the map as are involved in or essential to the description of the property.—Beach Front Hotel Co. v. Sooy, C. C. A., 197 Fed. 881.

56. **Evidence**—Judicial Notice.—The Supreme Court will take judicial notice of the situation in the state with reference to the nominations for Republican presidential electors.—State v. Olsen, S. D., 137 N. W. 561.

57. **Forcible Entry and Detainer**—Collateral Covenants.—An action in unlawful detainer will lie for a breach of collateral covenants, as well as for a breach of those which run with the land.—Knight v. Black, Cal., 126 Pac. 512.

58. **Fraud**—Measure of Damages.—In an action for misrepresenting the value of corporate stock sold plaintiff, the measure of damages is the difference between the actual and the represented value of the stock, and not the difference between the actual value and the contract price.—Chapman v. Bible, Mich., 137 N. W. 533.

59. **Frauds, Statute of**—Partnership in Land.—An agreement to form a partnership to buy and sell real estate and build canals and ditches need not be in writing.—Brown v. Spencer, Cal., 126 Pac. 493.

60.——Priority.—The statute of frauds may be invoked, not only by the immediate parties to the contract, but by those in privity with them.—Ugland v. Farmers' & Merchants' State Bank of Knox, N. D., 137 N. W. 572.

61. **Homicide**—Aggressor.—One who kills another under an apprehension of death or great bodily harm must have been free from fault in bringing on the difficulty to justify the homicide.—Evans v. State, Okla., 126 Pac. 586.

62.——Reducing Degree.—Where the killing of decedent by accused is admitted or proved beyond a doubt, the burden of reducing the crime to manslaughter is on accused.—State v. Drummond, Wash., 126 Pac. 541.

63.——Voluntary Manslaughter.—Where accused shot decedent without malice aforethought, by the reckless or grossly careless handling of a pistol, when he knew or had rea-

son to know that it was dangerous to life in the way he used it, he was guilty of voluntary manslaughter, though he did not intend to shoot decedent.—Speaks v. Commonwealth, Ky., 149 S. W. 850.

64. **Husband and Wife**—Living Apart.—In a personal injury action by a married woman living apart from her husband, she is entitled to recover for expenses on account of medical services, where it is fairly inferable from the evidence that the husband had nothing to do with the employment of the physicians, and that she employed them herself.—Winnett v. Detroit United Ry., Mich., 137 N. W. 539.

65. **Indians**—Citizenship.—The relationship of guardian and ward existing between the United States and an Indian of the Osage Tribe in Oklahoma is not affected by the mere fact that such Indian may be a citizen of the United States and of the state.—Mosier v. United States, C. C. A., 198 Fed. 54.

66. **Infants**—Majority.—An infant becomes of full age the first moment of the day before his twenty-first anniversary.—United States v. Wright, C. C. A., 197 Fed. 297.

67. **Injunction**—Parties.—Where a trustee under a mortgage executed by a cemetery corporation is a party to suit to restrain a sale of cemetery lands, the bondholders need not be made parties, for they are represented by the trustee.—Carpenter v. Knollwood Cemetery, U. S. D. C., 198 Fed. 297.

68. **Insane Persons**—Guardian ad Litem.—Where an insane beneficiary of a trust was made a party to an accounting proceeding, the trustee's failure to have a committee or guardian ad litem appointed for her made the distribution decree voidable only and not void.—Cecil's Committee v. Cecil, Ky., 149 S. W. 965.

69. **Insurance**—Agency.—As to all matters affecting conditions precedent to a contract of insurance, the knowledge of the agent of the insurer, which good faith in the discharge of his duty would require him to disclose to his principal, is imputed to the insurer.—Rome Ins. Co. v. Thomas, Ga., 75 S. E. 894.

70.——Assignment.—One having obtained a valid insurance on his life, in the absence of prohibitory legislation or contract stipulations, may assign it to one having no insurable interest in his life.—Keckley v. Coshocton Glass Co., Ohio, 99 N. E. 299.

71.——Assigning Policy.—Straight life policies are nonnegotiable choses in action, and are assignable.—Johnston v. Scott, 137 N. Y. Supp. 243.

72.——Estoppel.—Generally assurance to insured under a fire policy that he may carry additional insurance, notwithstanding a clause in the policy to the contrary, given by the agent who solicits the insurance, receives the premium, and delivers the policy, binds insurer.—Kentucky Growers' Ins. Co. v. Logan, Ky., 149 S. W. 922.

73.——Unconditional Ownership.—The holder of the naked legal title to property, without any beneficial interest therein, has not the unconditional and sole ownership, within the meaning of a provision in a fire insurance policy.—Des Moines Ins. Co. of Des Moines, Iowa, v. Moon, Okla., 126 Pac. 753.

74. **Judgment**—Res Judicata.—While defendant may withhold a set-off consisting of an independent claim outside of the contract sued on and bring a separate action thereon, he cannot do so where it arises out of the contract sued on, and is involved in the determination of the issue.—Paccalona v. Peninsula Bank & Lumber Co., Mich., 137 N. W. 518.

75. **Landlord and Tenant**—Abandonment.—Where a tenant national bank goes into voluntary liquidation and abandons leased premises before the expiration of the term, the landlord need not relet, but may suffer the premises to remain vacant and recover his rent by action on the lease.—National Exchange Bank v. Hahn, Okla., 126 Pac. 554.

76.——Injunction.—A lessor may sue to restrain the lessee from opening a public highway over the land, and thereby permit adjacent landowners to sell lots in reliance on access thereto over the way, and thereby subject the lessor to litigation.—Gale v. McCullough, Md., 84 Atl. 463.

77.——Repairs.—A landlord is not bound to repair the premises leased, unless he has covenanted so to do in his lease.—Russell v. Little, Idaho, 126 Pac. 529.

78. **Liens**—Agreement for.—An express agreement between the parties to a mortgage that the mortgagee should have a lien for advances made for the purchase of building materials is valid and enforceable against the parties and their privies, and others who take with notice.—Westall v. Wood, Mass., 99 N. E. 325.

79. **Limitation of Actions**—Change of Party.—A mere change in a party to a suit does not of itself change the cause of action, unless the cause of action is a new one, and the amended declaration is not subject to the statute of limitations.—Beresh v. Supreme Lodge Knights of Honor, Ill., 99 N. E. 349.

80.——New Cause of Action.—A suit to establish a personal judgment as an equitable lien, being on a separate and distinct cause of action, does not relate back to the commencement of the original action, and is subject to the defense of limitation.—Lang v. Choctaw, O. & G. R. Co., C. C. A., 198 Fed. 38.

81.——United States as Party.—A state statute of limitations is not available to defeat an action by the United States.—United States v. Fitts, U. S. D. C., 197 Fed. 1007.

82. **Master and Servant**—Assumption of Risk.—That an employee may have assumed the risk from one of two contributing causes of an injury will not defeat his right to recover, where the other cause is one for which the master is liable.—Northern Pac. Ry. Co. v. Maerkl, C. C. A., 198 Fed. 1.

83.——Fellow Servants.—That fellow servants were at considerable distance from or out of sight of each other held not to affect liability of the master for the death of one from the negligence of the other.—Drewaneak v. Walville Lumber Co., Wash., 126 Pac. 536.

84.——Pleading.—Where it was determined that the evidence did not entitle an employee of an interstate railroad to recover for personal injuries under the Employer's Liability Act, he was entitled to have the case submitted under the common law, as such act only superseded the common law, and did not repeal it.—Jones v. Chesapeake & O. Ry. Co., Ky., 149 S. W. 951.

85. **Mechanics' Liens**—Statutory Action.—The right to lien for materials and labor in the erection of a building is wholly statutory.—Doll v. Young, Ky., 149 S. W. 854.

86.——Substantial Performance.—A building contractor who, in good faith, attempts to comply with the contract, and who substantially, though not fully, complies with it, is entitled to a lien for the contract price, less deductions for defects and omissions in the work.—M. J. Walsh Co. v. Nelson, Ore., 126 Pac. 606.

87. **Monopolies**—Infringers.—A defendant, convicted of having been engaged in an unlawful combination, may transfer a valid title to its trademark, especially where the decree authorizes an assignment to the transferee, and the transferee may protect his rights as against an infringer.—Weyman-Bruton Co. v. Old Indian Snuff Mills, U. S. D. C., 197 Fed. 1015.

88.——Police Power.—House Bill No. 2247, prohibiting any person engaged in general business from entering into combinations or discriminating in the price of commodities sold, for the purpose of destroying the business of a competitor and acquiring a monopoly, is within the police power of the state.—Mass., 99 N. E. 294.

89. **Mortgages**—Indorsement on Note.—That a provision contained in a mortgage is indorsed on the back of notes secured by the mortgage neither adds to nor detracts from the

rights of the parties.—Matt v. Matt, Iowa, 137 N. W. 489.

90.——Mechanics' Lien.—A mechanic's lien for labor and materials furnished under a contract takes precedence over a mortgage given after the contract was made, though the labor and materials, or some of them, were not actually furnished until after the mortgage was given.—Saucier v. Maine Supply & Garage Co., Me., 84 Atl. 461.

91.——Parol Evidence.—Parol evidence is admissible to show that a deed absolute on its face is in reality a mortgage.—Leland v. Morrison, S. C., 75 S. E. 889.

92. **Navigable Waters.**—Islands.—Where an island in a navigable river was sold by the state, the purchaser acquired title to the accretion at the head or foot of the island, and was not limited to accretions within an extension of his lateral boundaries at right angles to the thread of the stream.—Van Dusen Inv. Co. v. Western Fishing Co., Ore., 126 Pac. 604.

93. **Negligence**—Concurrence.—To constitute negligence where concurrent, independent causes result in injury, the injury complained of must be one that, under the circumstances, might have been reasonably anticipated by a person of ordinary prudence as the natural result of the first negligent act.—City of Lawrenceburg v. Lay, Ky., 149 S. W. 862.

94.——Proximate Cause.—While the question of proximate cause may be one of law, it is generally a question of fact for the jury, under instructions as to what the law requires to constitute it.—Hardy v. Hines Bros. Lumber Co., N. C., 75 S. E. 855.

95.——Proximate Cause.—When an injury can be traced directly to a tortious act, and but for this tortious act it could not reasonably be supposed that the injury would have resulted, this essentially antecedent act may be said to be the "proximate cause of the injury.—Southern Ry. Co. v. Daughdrill, Ga., 75 S. E. 925.

96.——Rescue of Another.—Where one at fault or without fault finds another in peril by his own or without his own fault, he must use such active means as his best judgment prompts and his ability permits to prevent injury or to moderate it.—Bragg v. Central New England Ry. Co., 137 N. Y. Supp. 273.

97. **Parent and Child**—In Loco Parentis.—One who stands in loco parentis to a fatherless child has a right of action, against one who tortiously deprives him of the services of the child, for such loss.—City of Albany v. Lindsey, Ga., 75 S. E. 911.

98.——Liability.—A father who authorized his minor son to use his automobile for the pleasure of the family is liable for the son's negligence in driving the automobile for such purpose with a friend who was a guest of the family.—McNeal v. McKain, Okla., 126 Pac. 742.

99. **Perjury**—Materiality.—On investigation by a grand jury of a charge of conspiracy to comm't an offense against the United States, testimony that accused attempted to bribe an employee of the government to conceal evidence was material, and false testimony before the grand jury relative thereto constituted perjury.—Brzezinski v. United States, C. C. A., 198 Fed. 65.

100. **Physicians and Surgeons**—Malpractice.—Liability of a physician for negligent or unskillful treatment being founded on tort, not contract, it is immaterial that the physician was employed, not by the patient, or any one authorized to act for him, but by one who had injured him.—Coss v. Spaulding, Utah, 126 Pac. 468.

101. **Principal and Surety**—Co-Sureties.—Where several bonds are given for the same purpose, and the surety on one bond is compelled to pay the entire amount, he may proceed against his co-sureties on all the bonds for contribution.—Fidelity & Deposit Co. of Maryland v. Phillips, Pa., 84 Atl. 432.

102. **Receivers**—Caveat Emptor.—A sale by a receiver appointed by a court is a judicial sale, to which the maxim "caveat emptor" applies.—Southern Cotton Mills v. Ragan, Ga., 75 S. E. 611.

103. **Removal of Causes**—Judicial Code.—The Judicial Code, enacted March 3, 1911, does not require that the petition to remove state that the petitioner has a just cause or a just defense and intends to prosecute.—Chase v. Erhardt, U. S. D. C., 198 Fed. 305.

104. **Sales**—Stoppage in Transitu.—A consignor may exercise the right of stoppage in transitu while the goods are in the possession of the carrier at destination and are held for unpaid freight charges, unless the bill of lading has been assigned to a bona fide purchaser for value.—Gas v. Southern Pacific Co., 137 N. Y. Supp. 261.

105. **Specific Performance**—Necessary Parties.—In a suit for the specific performance of a contract for the exchange of real estate, a third person, interested in a sale of the property and entitled to a commission in the event of the carrying out of the contract is not a necessary party.—Clark v. Jankowski, Ill., 99 N. E. 338.

106.——Unperformed Condition.—Where payment of the amount due under a contract for the sale of land was a condition precedent to defendant's covenant to convey, complainant could not enforce specific performance while the condition of payment remained unperformed.—Eastern Oregon Land Co. v. Moody, C. C. A., 198 Fed. 7.

107. **Subrogation**—Limitation on.—A person subrogated to the right of another can exercise no right not possessed by his predecessor, and can only exercise such right under the same conditions and limitations as were binding upon his predecessor.—Poe v. Philadelphia Casualty Co., Md., 84 Atl. 476.

108.——Surety.—The surety paying the creditor is entitled to subrogation to all securities held by the creditor for payment of the debt, no matter from whom or how obtained.—Bankers' Surety Co. v. Linder, Iowa, 137 N. W. 496.

109. **Torts**—Copyright.—Defendant having been employed to photograph the bodies of plaintiff's dead children, his filing for copyright of one of the photographs in the copyright office held a violation of plaintiff's right of privacy, for which the photographer was liable for damages.—Douglas v. Stokes, Ky., 149 S. W. 849.

110. **Trusts**—Election of Remedies.—Where a trust fund has been wrongfully paid over by the trustee to third parties, having notice of the trust and participating in its misappropriation, the beneficiary may proceed in the same action against the trustee and such parties, or may proceed against the trustee alone.—Stratton v. Stratton's Adm'r., Ky., 149 S. W. 900.

111.——Fiduciary Relation.—A conveyance of land to one under contract with a corporation to promote its interest in the development of its business on the land conveyed is, by reason of the fiduciary relation to the corporation, a trustee of the land for it.—Soderberg v. McRae, Wash., 126 Pac. 538.

112.——Parol Trust.—A parol agreement by a wife to return property conveyed to her by her husband to his children at her death is not within the statute of frauds, and may be the basis of an enforcebale constructive trust.—Becker v. Neurath, Ky., 149 S. W. 857.

113.——Resulting Trust.—Where purchasers of real estate, unable to pay the price, obtained the money therefor from a third person to whom the property was conveyed under an agreement to hold the same until repayment, no further promise on the part of the third person was necessary to constitute a resulting trust.—Brown v. Spencer, Cal., 126 Pac. 493.

114.——Resulting Trust.—If a mother buys land with her own funds, and causes title to be made to her son under an agreement that the property is to be hers, and that the son will make to her such a conveyance as she may require, a trust in her favor will be implied.—Wilder v. Wilder, Ga., 75 S. E. 654.

115. **Wills**—Construction.—A devise of such portion of a lot as may remain unsold at death of testator is revoked by testator's sale of the property; and the devisee is not entitled, in place of the lot, to the proceeds of the purchase mortgage, though uncollected by testator.—Walker v. Waters, Md., 84 Atl. 466.

116.——Construction.—Where two clauses or parts of a will are so irreconcilable that they cannot possibly stand together, the later clause will prevail.—In re Randall's Will, 137 N. Y. Supp. 319.

117.——Shelley's Case.—The rule in Shelley's Case does not apply to a devise to a person and to his children with a provision that, if the devisee die without legal issue, the property is to go to the heirs of testator's father.—Chambers v. Union Trust Co., Pa., 84 Atl. 512.